

# Memorandum



Utah Department of Transportation  
Construction & Materials Division

**DATE:** July 25, 2008

**TO:** Resident Engineers, District Engineers

**FROM:** Kris T. Peterson, P.E.  
Director Construction/Materials

**SUBJECT:** Consistent Approach to Contractual Actions Regarding Asphalt Shortages

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Due to recent events associated with the supply of asphalt, it has become necessary to issue guidance to those responsible to manage UDOT construction projects. Each project has its own individual needs and specific conditions. This memorandum is issued to establish a common statewide approach to dealing with this issue to the extent possible, given each projects specific circumstances.

At this time, several projects, in all regions of the state, are experiencing delays associated with a lack of supply of asphalt binder/products. These delays are not specific to any contractor, region or project type. They are spread across all aspects of the UDOT program. The current high prices of gasoline associated with crude oil prices have created shortages in the asphalt supply market.

In the event that a Contractor contacts a Resident Engineer and makes statements to the effect that they are unable to meet their current contractual obligations, a Resident Engineer should work with them to determine the extent of potential impacts to the project. This situation should be documented via written communication from the Contractor to the Department.

Based on your individual project situations you may consider placing the project in suspension or considering a non-compensable time extension to allow the Contractor to make accommodations to meet their obligations. The Department maintains the position that our contract is with the Contractor and we need to work within the confines of the contract. In the event that suspensions or time extensions are granted, please follow proper contractual procedures to enact such measures. In no case should the Department or its representative formally initiate such measures without prior notice (verbal or written) from the Contractor.

Additionally, in the event that a time extension or suspension is granted, the provisions associated with asphalt and fuel (or steel if applicable) escalation costs specified in Section 01282 should be frozen at the index level at the date on which the time extension or suspension is granted. This is to prevent any gains to the Contractor or additional costs (direct or in-direct) be encumbered upon the Department as a result of the changes.

It is the Contractors responsibility to do all possible to meet the contracted obligations. If after examining all reasonable courses of action, the Contractor cannot supply asphalt products in a timely manner, they should bring potential options/substitutions to you for consideration. You should work with them to identify and determine if any potential options can be considered "equal or better" to the material/pavement originally included in the contract. Any change in the as bid pavement design (including binder grades) should be coordinated with and approved by the Region Materials Engineer and should likewise only be changed if a contract change order is processed.

Please be careful and conscious with your dealings regarding this issue. If you have questions regarding this matter, feel free to contact either myself or Greg Searle. Due to the widespread and far-reaching impacts of this issue, it is important to deal with this matter in a consistent manner regardless of project location or type.

KP/jr

cc: Jim McMinimee, Carlos Braceras, Region Directors, Region Materials Engineers